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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

)	
)	Case No. 4:22-cv-01608-YGR
FIFTH CHURCH OF CHRIST, SCIENTIST,)	
)	JOINT CASE MANAGEMENT
IN SAN FRANCISCO, CALIFORNIA, <i>et al.</i> ,)	STATEMENT & [PROPOSED] ORDER
)	
Plaintiffs,)	
)	
)	
v.)	
)	
CITY AND COUNTY OF SAN)	
)	
FRANCISCO, <i>et al.</i> ,)	
)	
Defendants.)	
)	
)	

The parties to the above-entitled action jointly submit this JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the Northern District of California and Civil Local Rule 16-9.

1. Jurisdiction & Service

The basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's counterclaims, whether any issues exist regarding persona jurisdiction or venue, whether any parties remain to be served, and, if any parties remain to be served, a proposed deadline for service.

Plaintiffs: This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (a)(4), and 42 U.S.C. §§ 2000cc, *et seq.*; jurisdiction to provide declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202; and supplemental jurisdiction over claims brought under California law under 28 U.S.C. § 1367(a). Venue is proper pursuant to 28 U.S.C. § 1391. No issues exist regarding personal jurisdiction or venue. No parties remain to be served.

Defendant: Defendant City and County of San Francisco—sued herein as City and County of San Francisco, City and County of San Francisco Planning Commission, and San Francisco Board of Supervisors (collectively “the City”)—has filed a Notice of Pendency of Other Action or Proceeding (ECF No. 20). In light of the parallel state court proceeding described in the Notice, this Court should abstain from exercising its jurisdiction until the state proceeding is resolved. Plaintiffs have not served Petitioner-Plaintiffs in the state action, the nonprofit corporation Yes In My Back Yard (“YIMBY”) and Sonja Trauss, and Real Party in Interest Tenderloin Housing Clinic (“THC”), who are required parties in this case.

2. Facts

A brief chronology of the facts and a statement of the principal factual issues in dispute.

1 **Plaintiffs** - Plaintiff Fifth Church of Christ, Scientist in San Francisco (“Church”)
2 lacks a building that can adequately accommodate its religious exercise and has been
3 seeking to construct a new house of worship since 2013. The proposed project
4 (“Project”)—which includes a new church building and Christian Science Reading Room
5 that will meet the religious needs of the Church, in addition to 316 group housing units—
6 has faced extreme and unreasonable delays in the land use approval process by
7 Defendants and was ultimately denied by the Board of Supervisors (“Board”), who
8 overturned the Project’s approval on appeal. As a result, the Church’s religious exercise
9 is severely impeded.
10

11 The Church cannot fulfill its religious mission in its current structure and seeks to
12 replace its current building with a place of worship that will accommodate its religious
13 exercise. The Church’s building on a blighted street-front and alleyway that regularly
14 attracts violence and drug use in front of the Church, prevents it from offering a
15 welcoming environment and blocks members’ access to the Church. Tent encampments
16 adjacent to the building block access to the Church’s entrances. Members and staff have
17 been attacked, threatened and subjected to racist slurs. For years, the Church has sought
18 to replace its current structure with a new house of worship, Christian Science Reading
19 Room, and housing that will animate the block and eliminate the blight that fosters unsafe
20 and unwelcoming conditions for Church members.
21

22 Plaintiffs also seek to construct affordable and workforce housing on its property,
23 which is desperately needed in the Tenderloin neighborhood and which will enable the
24 Church to fulfill its specific religious mission of serving its local community by
25 providing safe and dignified housing and bringing healing to the neighborhood.
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1 The disapproval of the Project has blocked the construction of new housing in the
2 Tenderloin, including affordable housing, and is part of a larger attack on group housing
3 in the City. The denial of the Project and subsequent actions taken to restrict group
4 housing City-wide have a disproportionate impact on racial minorities and families with
5 children, which is statistically significant and severe, and takes place amidst a housing
6 crisis “of historic proportions.”
7

8 **Defendant:** In November 2018, the City and County of San Francisco (“City”)
9 approved Plaintiffs’ application to demolish three existing buildings (containing a church,
10 commercial uses, and five residential units) at 450-474 O’Farrell Street and 532 Jones
11 Street (the project site), merge the three lots into a single parcel, and construct a new 13-
12 story (130-foot) mixed-use building that would include residential, religious, and
13 commercial uses. This project (the “Original Project”) required a conditional use
14 authorization (“CUA”) because it did not otherwise comply with applicable, objective
15 zoning standards under the San Francisco Planning Code, including the standards for
16 building height, bulk, and rear yard space. (A CUA allows the San Francisco Planning
17 Commission, and the Board of Supervisors on appeal, to approve uses or projects that
18 may be “necessary or desirable” in a particular neighborhood, but which are not allowed
19 as a matter of right within a particular zoning district.) The Planning Commission
20 approved, and the Board on appeal affirmed, a CUA for the Original Project.
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23 In January 2020, Plaintiffs sought to revise the approved project, primarily by
24 changing its residential character and replacing the previously approved 176 Dwelling
25 Units with 316 Group Housing rooms (hereafter the “Revised Project”). In general, the
26 Planning Code defines a Dwelling Unit as a room or suite of rooms designed for
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1 occupancy by one family with one kitchen. Group Housing refers to lodging with limited
2 kitchen facilities that does not qualify as a Dwelling Unit. Examples of Group Housing
3 include a residential hotel, guesthouse, boarding house, commune, or fraternity or
4 sorority house. Most of the Revised Project would consist of Group Housing rooms with
5 a maximum gross floor area of 350 square feet, which Plaintiffs expected to rent at
6 approximately \$3,500 per month.
7

8 Like the Original Project, the Revised Project required exceptions from applicable
9 Planning Code standards for building height, bulk, and rear yard space, and also required
10 amending the conditions of approval in the original CUA issued to Plaintiffs. Amending
11 the conditions of approval in a CUA requires a public hearing before and authorization by
12 the Planning Commission, and the Board of Supervisors on appeal.
13

14 In June 2021, the Planning Commission approved Plaintiffs' application for an
15 amended CUA. The Tenderloin Housing Clinic ("THC") appealed this approval to the
16 Board of Supervisors ("Board"), stating, among other reasons to reverse the approval,
17 that the neighborhood was already saturated with market rate Group Housing projects,
18 which came at the expense of family-sized housing units, and that the project failed to
19 address the issue of overcrowding for families in the Tenderloin. THC thus challenged
20 the Revised Project as not "necessary or desirable" for the community, the threshold
21 determination for a CUA under Section 303 of the Planning Code. In October 2021,
22 following a duly noticed public hearing, the Board upheld THC's appeal and reversed the
23 Planning Commission's decision to approve Plaintiffs' application for an amended CUA.
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26 In January 2022, YIMBY and Sonja Trauss filed a petition for writ of mandamus
27 and complaint in San Francisco Superior Court, challenging the Board's decision on
28

1 THC's appeal. Plaintiff Fifth Church of Christ, as the owner of the property comprising
 2 the project site, and Plaintiff Forge Development Partners, LLC are named as real parties
 3 in interest, as is THC.

4 On April 4, 2022, THC filed an answer in the state court proceeding. On May 19,
 5 2022, the City certified the administrative record and filed a demurrer to the amended
 6 petition and complaint. The City's demurrer is scheduled to be heard on July 27, 2022.

8 **3. Legal Issues**

9 *A brief statement, without extended legal argument, of the disputed points of law, including reference to*
 10 *specific statutes and decisions.*

11 **Plaintiffs:** Plaintiffs allege violations of the Religious Land Use and
 12 Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc, *et seq.*; the
 13 First Amendment's Free Exercise Clause, 42 U.S.C. § 1983; the Fair Housing Act, 42
 14 U.S.C. § 3604; the California Housing Accountability Act (Gov't Code §§ 65589.5, *et*
 15 *seq.*); the San Francisco Planning Code (Planning Code); and seeks a writ of mandamus
 16 pursuant to the California Civil Code of Procedure (CCP § 1094.5).

17 **Defendants:** This action arises from the City's final decision on Plaintiffs'
 18 application for an amended CUA, following an administrative appeal by THC. Plaintiffs'
 19 requested relief – namely "an order overturning the Board's granting of the subject
 20 conditional use appeal" and damages—is substantially similar to, if not taken verbatim
 21 from, the petition and complaint in the parallel state proceeding. Therefore, to avoid
 22 conflicting results and conserve public resources, this Court should either stay or dismiss
 23 the present action until the state court proceeding is resolved. Moreover, if this action is
 24 to proceed, parties to the state action must be joined as required parties.

4. Motions

All prior and pending motions, their current status, and any anticipated motions.

Plaintiffs: There are no prior or pending motions at this time.

Defendant: The City anticipates filing a motion for judgment on the pleadings under Fed. R. Civ. P. 12(c).

5. Amendment of Pleadings

The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings.

Plaintiffs: If the parties do not achieve settlement, Plaintiffs will propose a new deadline of May 1, 2024 to amend the pleadings.

Defendant: The City has informed Plaintiffs that the parties to the state action are required parties. The Complaint must be amended to join these parties, and the City may seek leave to amend its Answer to the Complaint (ECF No. 21) to include additional defenses. The City proposes a deadline to amend pleadings of June 30, 2023.

6. Evidence Preservation

A brief report certifying that the parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines") and confirming that the parties have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action. See ESI Guidelines 2.01 and 2.02, and Checklist for ESI Meet and Confer.

Counsel for Plaintiffs and Defendant have reviewed the Court's ESI Guidelines and have agreed to on-going meet and confer discussions regarding the same pursuant to Federal Rule of Civil Procedure 26(f) and the Northern District's Checklist for ESI.

7. Disclosures

Whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26 and a description of the disclosures made. For ADA and employment cases, see General Order Nos. 56 and 71.

1 Plaintiffs and Defendants exchanged initial disclosures regarding discoverable
2 information, custodians, documents, damages calculations, and insurance, as specified in
3 Fed. R. Civ. P. 26(a)(1) on July 5, 2022.

4 **8. Discovery**

5 *Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or*
6 *modifications of the discovery rules, a brief report on whether the parties have considered entering into a*
7 *stipulated e-discovery order, a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and any*
identified discovery disputes.

8 No discovery has been conducted, and no discovery disputes have been identified,
9 to date.

10 ***Discovery Plan:*** There will be no changes in timing, form, or requirements of
11 mandatory disclosures under Federal Rule of Civil Procedure 26(a). Plaintiffs anticipate
12 that discovery will be needed on the following subjects: Plaintiffs' proposed Project;
13 Plaintiffs' land use applications and application process; Defendants' delays in
14 processing and deciding Plaintiffs' applications; appeals of Plaintiffs' conditional use
15 approvals; opposition to Plaintiffs' proposed Project; Defendants' land use laws, policies,
16 and procedures; Plaintiffs' proposed religious use; Plaintiffs' use of property;
17 discriminatory treatment of Plaintiffs; group housing in San Francisco, including
18 opposition to group housing and efforts to limit and/or eliminate group housing from the
19 City; demographics of the Tenderloin; demographics of the City; affordable housing in
20 the City; need for family housing in the City and Tenderloin neighborhood; any asserted
21 governmental interest(s) supporting the challenged conduct; any alternative means
22 considered or available to achieve such asserted governmental interest(s); the existence
23 and regulation of religious land uses within the City's jurisdiction; the existence and
24 regulation of assembly and institutional land uses within the City; the existence and
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1 regulation of land uses in the zoning district and the vicinity in which Plaintiffs' proposed
2 religious land use would occur; the adoption and application of the zoning code
3 provisions applied to Plaintiffs; any litigation in which the parties have been involved;
4 the disputed factual allegations set forth in the Complaint.

5
6 The Parties will continue to confer regarding a proposed ESI order specifying the
7 forms in which the ESI should be produced and a stipulation regarding inadvertent
8 disclosure of privileged material. If either party deems it necessary, the parties will also
9 confer regarding a protective order regarding confidentiality.

10
11 Plaintiffs will request permission to conduct 30 depositions and serve 25
12 interrogatories to each Defendant. Plaintiffs believe they will need to exceed the one-
13 day/seven-hour limitation for their 30(b)(6) deposition of each Defendant to two seven-
14 hour days; the amount of time to be determined by the parties who will confer beforehand
15 on such limitations. Expert depositions shall not commence until after expert reports are
16 served as described below and conclude by the end of expert discovery.

17
18 The City does not believe Plaintiffs' proposal for 30 depositions per side and
19 double the default maximum deposition times under Fed. R. Civ. P. 30(b)(6) is reasonable
20 or proportional to the needs of the case. As discussed above, the City believes Plaintiffs
21 should bring any claims they have in the earlier-filed state action, and this case should be
22 stayed or dismissed. If this case proceeds, the City may seek discovery regarding
23 Plaintiffs' claims and the City's defenses, including the facts and legal issues described in
24 the City's portions of Sections 1–3 above.

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27 Experts

28 Plaintiffs anticipate that expert testimony will be necessary and intend to call one

1 or more expert witnesses at trial. The City believes that it is too early in the litigation to
2 determine whether expert testimony will be appropriate or necessary.

3 Plaintiffs' Position: RLUIPA provides that plaintiffs and defendants have the
4 burden of persuasion on different elements of a claim under the statute. If a plaintiff
5 produces prima facie evidence to support a claim alleging a violation of the Free Exercise
6 Clause or a violation of section 2000cc of this title, the government shall bear the burden
7 of persuasion on any element of the claim, except that the plaintiff shall bear the burden
8 of persuasion on whether the law (including a regulation) or government practice that is
9 challenged by the claim substantially burdens the plaintiff's exercise of religion. 42
10 U.S.C. § 2000cc-2(b).
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13 As such, Plaintiffs believe that each party should simultaneously serve their initial
14 expert reports related to those elements on which they have the burden of persuasion, and
15 the opposing party should have the opportunity to then serve expert reports in response. .
16 If a settlement is not reached, Plaintiffs will propose new dates for expert discovery.
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18 **Defendant:** The City believes that it is premature to set an expert discovery
19 schedule including because Plaintiffs have refused to join required parties under Fed. R.
20 Civ. P. 19, such that this case should be stayed or dismissed in favor of the earlier-filed
21 state court action in which all required parties are already involved. If the Court is
22 inclined to set an expert discovery schedule, the City proposes the schedule set out in
23 Section 17 below.
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25 **9. Class Actions**

26 N/A
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10. Related Cases

Any related cases or proceedings pending before another judge of this court, or before another court or administrative body.

The parties disagree as to whether *Yes In My Back Yard et al. v. City and County of San Francisco, et al.*, Case No. CPF-21-517651 (San Francisco Superior Court Compl. filed December 30, 2021) is a related case as specified in the Standing Order for All Judges of the Northern District of California re the Contents of a Joint Case Management Statement (“CMS Standing Order”). The parties agree that no related cases, as defined in Civil L.R. 3-12(a)(2), are pending before *this court* at this time. Defendant, however, asserts that the parallel state proceeding is a related case per the CMS Standing Order, as set forth in Defendant’s Notice of Pendency of Other Actions (ECF No. 20) and Civil L.R. 3-13(a). Plaintiffs assert that it is not, as set forth in their Statement Opposing Defendants’ Notice of Pendency of Other Actions. (ECF No. 23).

11. Relief

All relief sought through complaint or counterclaim, including the amount of any damages sought and a description of the bases on which damages are calculated. In addition, any party from whom damages are sought must describe the bases on which it contends damages should be calculated if liability is established.

Plaintiffs: Plaintiffs seek the following relief:

A declaration that Defendants’ actions in delaying approval of the Project, and the Board’s granting the appeal and denying the conditional use authorization, are illegal and unconstitutional on the ground that they burden the Church’s religious exercise without being the least restrictive means of fulfilling a compelling governmental interest, thereby violating the Free Exercise Clause of the First Amendment to the United States Constitution and the Religious Land Use and Institutionalized Persons Act of 2000; a declaration that the Defendants’ actions as alleged in the Complaint violate the Fair

1 Housing Act, 42 U.S.C. § 3604; a preliminary and permanent injunction overturning the
2 Board's granting of the subject conditional use appeal and preventing Defendants from
3 illegally and unconstitutionally preventing the Plaintiffs from completing their Project,
4 including, but not limited to, enjoining Defendants from applying the City's land use
5 laws in a manner that substantially burdens Plaintiffs' religious exercise and
6 discriminates against racial minorities and families with children, and enjoining
7 Defendants from preventing Plaintiffs' exercise of constitutional and statutory rights; a
8 writ of mandate or other appropriate relief, whether by injunction, declaration, or order,
9 commanding Defendants to comply with the Housing Accountability Act with respect to
10 the proposed Project, including, but not limited to, an order that the Project is deemed
11 compliant with all "applicable, objective general plan, zoning, and subdivision standards
12 and criteria, including design review standards, in effect at the time that the application
13 was deemed complete" as a matter of law; an order overturning the Board's granting of
14 the subject conditional use appeal (Board of Supervisors File No. 210858); an order
15 commanding Defendants to approve the subject Project pursuant to Gov. Code §
16 65589.5(k)(1)(A)(ii); An award to Plaintiffs of full damages, costs, and attorney's fees
17 arising from the Defendants' illegal and unconstitutional actions; including reasonable
18 attorney's fees under Code of Civil Procedure § 1021.5 and Gov. Code § 65589.5; an
19 award of monetary damages; and such other and further relief as this Court may deem
20 just and appropriate.

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22 **Defendant:** The City seeks dismissal of the complaint, denial of all remedies
23 sought by Plaintiffs, and judgment in the City's favor, including an award of attorneys'
24 fees and costs.
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12. Settlement and ADR

Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including which ADR process option the parties have selected and a proposed deadline, or if the parties do not agree, each party's preferred option and timing, in compliance with ADR L.R. 3-5. In addition, the parties should include a description of key discovery or motions necessary to position the parties to negotiate a resolution.

Plaintiffs: The parties have been engaging in settlement efforts with the assistance of Magistrate Judge Donna M. Ryu.

Defendant: The parties are actively pursuing settlement under Magistrate Judge Donna M. Ryu's direction and propose to complete the process by taking a revised project application to the Planning Commission.

13. Consent to Magistrate Judge For All Purposes

Whether all parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment. ☐ YES ☐ NO

Not all parties consent to having a magistrate judge conduct all further proceedings including trial and entry of judgment.

14. Other References

Whether the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

This case is not suitable for binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.

The parties have not agreed to narrow any issues or stipulate to any facts.

16. Expedited Trial Procedure

Whether this is the type of case that can be handled under the Expedited Trial Procedure of General Order 64, Attachment A. If all parties agree, they shall instead of this Statement, file an executed Agreement for

Expedited Trial and a Joint Expedited Case Management Statement, in accordance with General Order No. 64, Attachments B and D.

This type of case is not suitable for the Court's expedited trial procedure.

17. Scheduling

Proposed dates for completion of initial ADR session, designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial.

Plaintiffs: If the parties are not able to achieve a settlement, Plaintiffs propose that fact discovery commence immediately upon termination of settlement efforts. If a settlement is not reached, Plaintiffs will propose new dates based on the date that settlement efforts terminate.

Defendant: If the parties are unable to settle their dispute and the Court is not inclined to grant further extensions of time for the City's deadline to file an MJOP, the City proposes the following schedule for the Court's approval:

- City files a motion under Fed. R. Civ. P. 12(c) by April 28, 2023
- Hearing on Rule 12 motions by June 6, 2023
- Joinder of required parties and amendment of pleadings by June 30, 2023
- Completion of factual discovery by April 1, 2024
- Disclosure of proposed expert or other opinion witnesses pursuant to Fed. R. Civ. P. 26(a)(2), and supplementation of such disclosures by April 22, 2024
- Completion of rebuttal expert reports by June 7, 2024
- Completion of expert discovery by July 5, 2024
- Hearing of dispositive motions by September 24, 2024
- Final pretrial conference by November 8, 2024
- Trial by December 2, 2024

18. Trial

Whether the case will be tried to a jury or to the court and the expected length of the trial.

Plaintiffs have demanded a jury trial. The trial length is not yet known.

19. Disclosure of Non-party Interested Entities or Persons

Whether each party has filed the “Certification of Interested Entities or Persons” required by Civil Local Rule 3-15. In addition, each party must restate in the case management statement the contents of its certification by identifying any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding.

Plaintiffs: Plaintiffs filed a certificate on March 14, 2022, in Document 2, and identify the following entities, and unnamed interested persons: 1. FIFTH CHURCH OF CHRIST, SCIENTIST, IN SAN FRANCISCO, CALIFORNIA, a California religious corporation; 2. FORGE DEVELOPMENT PARTNERS LLC, A California Limited Liability Company; 3. TL 450, LLC, A California Limited Liability Company

Defendant: The City, as a governmental entity, is not required to file a disclosure under Civil L.R. 3-15. The City has, however, informed Plaintiffs that their filing, which only identifies Plaintiffs as interested entities, is deficient. Parties to the parallel state proceeding – YIMBY, Sonja Trauss, and THC – have an interest that could be substantially affected by the outcome of this action, and, as stated above, are required parties herein.

20. Professional Conduct

Whether all attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

All attorneys of record for Plaintiffs and Defendants have reviewed the Guidelines.

1 **21. Other**

2 *Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.*

3 None that are known as of this statement's writing.

4
5 Dated:

STORZER & ASSOCIATES, P.C.

6 /s/ Robin N. Pick

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CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

JUDGE YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT